

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

WAYNE A. PORRETTI,

Plaintiff

v.

DANIELS, et al.,

Defendants

Case No.: 2:22-cv-00545-APG-DJA

Order

Plaintiff Wayne A. Porretti brings this civil-rights action under 42 U.S.C. § 1983 to redress constitutional violations that he claims he suffered while incarcerated at High Desert State Prison. ECF No. 14. On October 28, 2022, the magistrate judge ordered Porretti to file his current address and a non-prisoner application to proceed *in forma pauperis* within 30 days. ECF No. 21. That deadline expired without an updated address from Porretti, and court filings sent to him have come back as undeliverable. *See* ECF Nos. 22, 25, 27, 29, 31.

I. Discussion

District courts have the inherent power to control their dockets and “[i]n the exercise of that power, they may impose sanctions including, where appropriate . . . dismissal” of a case. *Thompson v. Hous. Auth. of City of Los Angeles*, 782 F.2d 829, 831 (9th Cir. 1986). A court may dismiss an action based on a party’s failure to obey a court order or comply with local rules. *See Carey v. King*, 856 F.2d 1439, 1440-41 (9th Cir. 1988) (affirming dismissal for failure to comply with local rule requiring *pro se* plaintiffs to keep court apprised of address); *Malone v. U.S. Postal Service*, 833 F.2d 128, 130 (9th Cir. 1987) (dismissal for failure to comply with court order). In determining whether to dismiss an action on one of these grounds, I must consider: (1)

1 the public’s interest in expeditious resolution of litigation; (2) the court’s need to manage its
2 docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring disposition of
3 cases on their merits; and (5) the availability of less drastic alternatives. *See In re*
4 *Phenylpropanolamine Prod. Liab. Litig.*, 460 F.3d 1217, 1226 (9th Cir. 2006) (quoting *Malone*
5 *v. U.S. Postal Serv.*, 833 F.2d 128, 130 (9th Cir. 1987)).

6 The first two factors, the public’s interest in expeditiously resolving this litigation and the
7 court’s interest in managing its docket, weigh in favor of dismissal of Porretti’s claims. The third
8 factor, risk of prejudice to defendants, also weighs in favor of dismissal because a presumption
9 of injury arises from the occurrence of unreasonable delay in filing a pleading ordered by the
10 court or prosecuting an action. *See Anderson v. Air West*, 542 F.2d 522, 524 (9th Cir. 1976). The
11 fourth factor—the public policy favoring disposition of cases on their merits—is greatly
12 outweighed by the factors favoring dismissal.

13 The fifth factor requires me to consider whether less drastic alternatives can be used to
14 correct the party’s failure that brought about the court’s need to consider dismissal. *See Yourish*
15 *v. Cal. Amplifier*, 191 F.3d 983, 992 (9th Cir. 1999) (explaining that considering less drastic
16 alternatives *before* the party has disobeyed a court order does not satisfy this factor); *accord*
17 *Pagtalunan v. Galaza*, 291 F.3d 639, 643 & n.4 (9th Cir. 2002) (explaining that “the persuasive
18 force of” earlier Ninth Circuit cases that “implicitly accepted pursuit of less drastic alternatives
19 prior to disobedience of the court’s order as satisfying this element[,]” *i.e.*, like the “initial
20 granting of leave to amend coupled with the warning of dismissal for failure to comply[,]” have
21 been “eroded” by *Yourish*). Courts “need not exhaust every sanction short of dismissal before
22 finally dismissing a case, but must explore possible and meaningful alternatives.” *Henderson v.*
23 *Duncan*, 779 F.2d 1421, 1424 (9th Cir. 1986). Because this action cannot realistically proceed


1 without the ability for the court and the defendants to send Porretti case-related documents,
2 filings, and orders, the only alternative is to enter a second order setting another deadline. But
3 without an updated address, the likelihood that the second order would even reach Porretti is
4 low, so issuing a second order will only delay the inevitable and further squander the court's
5 finite resources. Setting another deadline is not a meaningful alternative given these
6 circumstances. So the fifth factor favors dismissal.

7 **II. Conclusion**

8 Having thoroughly considered these dismissal factors, I find that they weigh in favor of
9 dismissal. It is therefore ordered that this action is dismissed without prejudice based on
10 Porretti's failure to file an updated address in compliance with this court's October 28, 2022,
11 order. The Clerk of Court is directed to enter judgment accordingly and close this case. No other
12 documents may be filed in this now-closed case. If Porretti wishes to pursue his claims, he must
13 file a complaint in a new case and provide the court with his current address.

14 I further order that the motion to dismiss this action filed by interested party Nevada
15 Department of Corrections (ECF No. 30) is denied as moot.

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17 Dated: January 18, 2023

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19 U.S. District Judge
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